

REMARKS

Claims 99-115 are pending. Claims 1-98 have been cancelled without prejudice. Applicants reserve the right to prosecute subject matter withdrawn from consideration by cancellation in one or more continuation, continuation-in-part, or divisional applications.

New claims 99-115 are supported by the specification and the original claims. Thus no new matter has been added.

Applicants would like to point out that a Revocation of Power of Attorney and Substitute Power of Attorney has been filed in connection with the above-identified application. Accordingly, Applicants would appreciate if the Examiner could use Attorney Docket No. 4883-0001 in place of GMD-102.1P US.

THE RESTRICTION REQUIREMENT

In the Official Action, restriction under 35 U.S.C. §121 is required to one of the fifty five groups of inventions proposed by the Examiner. The Examiner contends that the inventions of Groups I through LV are distinct. Additionally, the Examiner considers each nucleic acid or amino acid sequence contained in the Groups to be a distinct invention. Accordingly, Applicants are required to elect a single sequence in the elected Group to be searched and prosecuted in the instant application.

In order to be fully responsive, Applicants provisionally elect, with traverse, the invention of Group XVII, claims 33-36, 40, 42, and 53-55, and SEQ ID NO:16 to prosecute in the present application without prejudice to prosecution of the subject matter of the non-elected Groups and sequences in subsequent applications.

With respect to the Examiner's division of the Groups into a multitude of subgroups, each corresponding to one nucleic acid or amino acid sequence and the reasons stated therefore, Applicants respectfully traverse. Applicants contend that SEQ ID NOs:16 and 118 could be searched together and not pose a serious burden to the Examiner. The above-mentioned sequences are both splice variants of the claudin-18A polypeptide and thus encoded by the same gene. The splice variants share an identical C-terminal extracellular domain and intracellular domain and differ only in the N-terminal extracellular domain. Consequently, only the N terminal amino acid residues of SEQ ID NOs:16 and 118,

respectively, differ. Clearly one search could easily be designed that would encompass the sequence of both of the splice variants.

With respect to the Examiner's division of the detection of nucleic acids and polypeptides into different Groups and the reasons stated therefore, Applicants respectfully traverse. Applicants have provisionally elected Group XVII directed to methods of diagnosing a disease by detecting a polypeptide tumor-associated antigen. Applicants contend that detection of the nucleic acid encoding the same tumor-associated antigen could also be searched without a serious burden to the Examiner. The inventive step concerns an appreciation that the expression of certain molecules are increased in a diseased state. The expression of both of the nucleic acid and the polypeptide it encodes are thus elevated. Example 4 in the instant specification demonstrates that the splice variants of claudin-18A are elevated in both as nucleic acids (SEQ ID NOs:7 and 117) and polypeptides (SEQ ID NOs:16 and 118) in the disease state. As such, Applicants request that Group XVI is joined with provisionally elected Group XVII and are examined together.

The M.P.E.P. § 803 (Eighth Edition, Incorporating Revision No. 2, May 2004) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of M.P.E.P. § 803, the subject matter of the claims in Groups XVI and XVII as they relate to SEQ ID NOS:7, 16, 117, and 118 should be searched and examined in the subject application. Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be modified and the instant claims be examined in one application.

CONCLUSION


It is believed that the elected claims are in condition for allowance. Early and favorable action by the Examiner is earnestly requested.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 4883-0001.

Respectfully submitted,
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